27 November 1951

MEMORANDUM FOR THE RECORD

SUBJECT: Dual Compensation -- Government Corporations
Re: Comptroller General Manuscript Decisions
A-74111, July 17, 1936; A-85927, May 20, 1937;
A-95379, June 7 and July 11, 1938; B-37559,
November 5, 1943.

1. The following decisions which have not been over-ruled, but are subject "to the modifications expressed in 23 Comptroller General 815" are liberal precedents in the field of dual office holding.

2. A-85927, May 20, 1937.

(a) Facts: An employee of the Federal Land Bank terminated his employment with this organization and was granted vacation pay for two weeks. He immediately started to work for the National Resources Board and received pay from both.

(b) Held: The Act of May 10, 1916, 39 Stat. 120, as amended, provides, "unless otherwise specifically authorized by law, no money appropriated by this or any other act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of $2,000 per annum ..."

"As salaries of employees of Federal Land Banks are not paid from appropriated funds, but from the earnings of Federal banks, the con-current receipt of salaries ... was not in contravention of the above quoted statute."

3. A-74111, July 14, 1936, cites exactly the same language as the above case.

4. A-95379, June 7 and July 11, 1938.

(a) Facts: The Federal Housing Administrator appointed one Ewart to a temporary position at $3,600 per annum while he was on annual leave for a period of two months as Secretary of the Production Credit Corporation at $5,250 per annum.

All of the stock of the Production Credit Corporation was

owned by the United States; the initial revolving fund providing for the activities of the Corporation was derived from appropriated funds; the excess earnings of the Corporation were required to be paid into the revolving fund.

The Directors of the Production Credit Corporations are given the power, subject to approval by the Governor, to employ and fix the compensation of such officers and employees of such corporations as may be necessary to carry out the powers and duties conferred by law upon the Corporations. The salary of Basart was paid from earnings of the Corporation.

(b) Held: "As Mr. Basart was not appointed by a Federal officer but by the Directors of the Production Credit Corporation ... which includes both Federal officers and persons from private life, and as the fund from which his salary was paid as an employee of such Corporation was derived from the earnings of the Corporation, and not from an appropriation, the dual compensation statutes do not apply in this case."

(c) This case is indexed by the Comptroller General as being distinguished in 23 Comptroller General 815.

5. B-37552, November 5, 1943.

(a) Facts: The Secretary of State requested a decision as to whether an Act (5 U.S.C. 118(c)) providing for repayment of employees of the United States of losses sustained ... while in service of the United States abroad due to the depreciation of foreign currencies in their relationship to the American dollar, is available to employees of the Rubber Development Corporation, corporations created by the Co-ordinator of Inter-American Affairs, and similarly constituted Corporations of the United States.

"The Bureau of the Budget felt that such funds were not available since these corporations are not, in general, subject to Federal restrictive statutes, and therefore, should not be beneficiaries of legislation in this connection, unless specifically provided for by appropriated language. Further, no reason is known why funds of the Corporations may not be used for this purpose if necessary."

"In light of such court decisions as U.S. v. Strang,

254 U.S. 491; Pierce v. U. S., 38? U.S. 306; Losey v. TVA (C.C.A. 5, 1937, 93 F. 2d 726; Commonwealth v. Louse (Va. 1935), 178 S. E. 37 (and compare 1 Comp. Gen. 14; 34 Ops. Atty. Gen. 363, 369), there cannot be stated any broad generality that persons employed by the Government's Corporations are or are not employees of the U. S. for all purposes.

"In more recent years, it is the rule rather than the exception that congressional legislation on personnel matters expressly refers to Government corporation employees and either includes them within their scope or authorizes administrative action to that end. See, for example, the recent statutes with respect to the civil service, classification, annual leave, sick leave, retirement, overtime pay, citizenship, and the administration of the oath of Federal office. (Acts of November 26, 1940, 54 Stat. 1211, 1212, sections 1 and 3 (a); March 14, 1936, 49 Stat. 1161 and 1162; January 24, 1942, 56 Stat. 13; March 7, 1942, 56 Stat. 143; June 26, 1943. Public Law 90, sections 20?-6.) That unanimity of expression manifests a clear congressional intent that, for purposes of the same general character, Government corporation employees covered by those acts are to be treated and regarded as Government employees, from which it would follow that reimbursement from a proper fund for their exchange losses could be authorized, under the terms and conditions of the exchange loss act applicable to employees. Specifically, this would include persons in "all permanent positions in Government-owned or Government-controlled corporations, the compensation of which has been fixed on a per annum basis, pursuant to the allocations of such positions to the appropriate grade by the C.S.C. or by administrative action of the agency concerned." (adopted from Executive Order No. 8882, September 3, 1941, under the automatic promotion Act of 1941).

"... the suggestion that corporations which are free of certain restrictive legislation are not included generally within 'beneficial' laws or rules is not the view of the courts. See Emergency Fleet Corp. v. Western Union Telegraph Co., 275 U.S. 415; Pittman v. Home Owners' Loan Corp., 308 U.S. 21; Callam County v. U. S., 263 U. S. 341; Inland Waterways Corp. v. Young, 309 U. S. 517; U. S. Grain Corp. v. Phillips, 261 [illegible] 106; N. Y. ex rel Rogers v. Graves, 299 U. S. 401).

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